

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MARIO NEAL,

Plaintiff,

v.

Case No. 17-13170

CITY OF DETROIT and ARIC TOSQUI,

Defendants.

**OPINION AND ORDER GRANTING PLAINTIFF'S MOTION TO
VOLUNTARILY DISMISS**

Plaintiff Mario Neal, a City of Detroit Police Officer, filed a pro se complaint alleging that his employer unlawfully discriminated against him on the basis of his race. (Dkt. #1.) Plaintiff's complaint named as Defendants Aric Tosqui and the City of Detroit Police Department. Defendants filed a motion to dismiss, arguing that they were not properly served and that the City of Detroit Police Department is not a legal entity subject to suit. (Dkt. #12.) United States District Judge John O'Meara granted the motion in part; he ordered that Plaintiff amend the complaint to substitute the proper legal entity—the City of Detroit—in place of the City of Detroit Police Department, and he ordered that the United States Marshal serve the original and amended complaints on the two Defendants. (Dkt. #15.) After the Defendants filed answers to the amended complaint, Judge O'Meara entered a scheduling order on June 5, 2018, setting the discovery deadline for October 9, 2018. (Dkt. #27.)

The case was subsequently transferred to the undersigned. Pending before the court is Plaintiff's motion—filed before the transfer—to voluntarily dismiss his complaint

without prejudice. (Dkt. #29.) Plaintiff avers that, just before the scheduling conference, he secured counsel in this matter, and discovery has not yet commenced (or had not, at least, at the time the motion was filed). He argues that Defendants will therefore suffer no prejudice if the matter is dismissed without prejudice.

Plaintiff filed his motion over a month ago. Though Plaintiff says that Defendants refused to stipulate to the dismissal without prejudice (see Dkt. #29 Pg. ID 125–26), they have not filed a response to Plaintiff’s motion. The deadline for Defendants’ response having passed, the court deems the motion unopposed. The court has determined that a hearing is unnecessary. E.D. Mich. L.R. 7.1(f)(2).

Voluntary dismissal is governed by Federal Rule of Civil Procedure 41(a). A plaintiff may voluntarily dismiss an action without a court order—subject to certain other Federal Rules—if a notice of dismissal is filed “before the opposing party serves either an answer or a motion for summary judgment,” or if a stipulated dismissal is “signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). But if neither situation is available to the plaintiff, the dismissal can be “only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). Whether to grant the motion to voluntarily dismiss and the terms of the voluntary dismissal are within the court’s discretion. *Bridgeport Music, Inc. v. Universal-MCA Music Publ’g, Inc.*, 583 F.3d 948, 953 (6th Cir. 2009). Unless the court orders otherwise, a dismissal under this rule is without prejudice. Fed. R. Civ. P. 41(a)(2).

Because Defendants have filed an answer and have, apparently, refused to sign a stipulated dismissal, Plaintiff requests voluntary dismissal by court order. The court has determined that dismissal without prejudice is appropriate. Plaintiff proceeded pro

se in this action, but now has the benefit of representation by learned counsel. Though this matter was first filed some ten months ago, a scheduling order was only recently entered. And the court sees no prejudice to Defendants from entering the dismissal, especially in light of their apparent decision not to oppose the motion. Accordingly,

IT IS ORDERED that Plaintiff's Motion to Dismiss Voluntarily (Dkt. #29) is GRANTED. Plaintiff's Amended Complaint (Dkt. #16) is DISMISSED WITHOUT PREJUDICE.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 31, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 31, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

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